

and the Track and Confirm Shipment History that indicated a deposit date of February 6, 2001, in the Chicago Central Facility. Applicant respectfully requests reconsideration of the dismissal.

Applicant has provided a substantial amount of evidence for corroborating Applicant's claim that the subject application was deposited on February 5, 2001. First, Applicant has provided printouts of iManage, a word processing system, as further proof that the application was deposited on February 5, 2001. The iManage documents indicate that the files were accessed on February 5, 2001, at 4:50 PM and then not accessed again until February 14, 2001. *See Exhibit 2.* For convenience, all exhibits from the Petition are included in this Request for Reconsideration. The iManage record supports the conclusion that the application was printed on February 5, 2001, and then taken to the Post Office.

Second, two other applications were filed on the same day. U.S. Patent Application Nos. 09/777,025 (the “‘025 application”) and 09/776,996 (the “‘996 application”) were both filed on February 5, 2001, and granted a filing date of February 5, 2001. *See Exhibit 5.* The iManage printouts for both the ‘025 and ‘996 applications show that these files were also last accessed on February 5, 2001. *See Exhibits 3 and 4.* The Track and Confirm Shipment History for the ‘025 and ‘996 applications each indicate deposit at the Chicago Loop Facility on February 5, 2001. *See Exhibit E.*

Additionally, as noted in the Petition, it is standard business practice for Express Mail packages to be taken to the Chicago Central Facility only during times that the Chicago Loop Facility is closed. *See Exhibit F,* ¶¶ 3 and 4. The time indicated on the Track and Confirm Shipment History for the ‘406 application is a time, 3:43 PM, that the package would normally be delivered to the Chicago Loop Facility. *Id.* Thus, if the Express Mail package were deposited with the Post Office on the date and time indicated, standard business practice would be to drop

it off at the Chicago Loop Facility, which is less than half a mile from the office, as opposed to the Chicago Central Facility, which is about two miles from the office. *See Exhibit D.*

All of this evidence manifests an intent on the part of the Applicant to file the '406 application on the critical date. *See Sturzinger v. Comm'r of Patents*, 377 F. Supp. 1284, 1286 (D.D.C. 1974) (granting earlier filing date where all circumstances manifest an intent to file on or before a critical date, others will suffer no prejudice by award of the earlier date, the date sought is a critical date, and the applicant made every effort to comply with the rules of the Patent Office).

The Applicant's case is analogous to the one in *Sturzinger*. The Applicant filed a provisional application, U.S. Patent Application No. 60/180,343, which expired on February 5, 2001. If the Applicant is not afforded the February 5, 2001, filing date, the Applicant will be precluded from claiming priority from the provisional application. Thus, February 5, 2001, is a critical date. The circumstances surrounding the filing of the application manifest the intent to file the application on February 5, 2001. Mr. Russ Genet, attorney for the Applicant, worked on the application on February 5, 2001, and prepared the papers for filing. *See Exhibit A*, ¶ 2. He gave the application and associated papers to the mail clerks to be delivered to the post office that day. *Id.* at ¶ 6. The iManage list also supports the affidavit that the application was worked on February 5, 2001. The Applicant made every effort to comply with the rules of the Patent Office. The application was finalized on February 5, 2001, and the papers were given to people responsible for delivering applications to the Post Office. When it was discovered that the file did not contain the Express Mail receipt, Mr. Sklena and Mr. Genet contacted various Post Offices in an effort to obtain a copy of the receipt. *See Exhibit A* ¶ 13, *Exhibit B* ¶¶ 3-9. Granting an earlier filing date would not be prejudicial to other parties because provisional

applications are not publicly available. Outside parties would not know about the provisional application and, thus, not be harmed if priority were granted back to it.

Finally, the accuracy of the Track and Confirm History indicating that the drop-off date is February 6, 2001, is suspect. First, as the Office of Petitions admits, it is confusing that two of the three applications were filed in the Chicago Loop Facility on February 5, 2001, and that the third was deposited a day later in a different location (the Chicago Central Facility). Second, as mentioned above, if the time and date on the History is correct, it is odd that it was deposited at the Chicago Central Facility, since it is standard business practice to deposit the application at the Chicago Loop Facility. Third, the system is fallible. Enclosed as Exhibit H is the Track and Confirm Shipment History for the original Petition for Corrected Filing Receipt. Exhibit I is a copy of the Express Mail receipt for this item. The Express Mail receipt indicates a deposit time of the Petition of 5:08 PM. The Track and Confirm Shipment History for this Express Mail receipt, however, indicates arrival at the Post Office at 3:53 PM the same day. Thus, the Track and Confirm History for the Petition cannot possibly be correct because it indicates that the Petition was received at the Post Office before it was actually deposited at 5:08 PM. Thus, it is possible that the Track and Confirm History for the '406 application is also incorrect.

Applicant, therefore, requests that this Request for Reconsideration be granted and a filing date of February 5, 2001, be assigned to this application.

No fee is believed to be due for filing this Request for Reconsideration. Should any fee be deemed necessary (except payment of the issue fee), however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 10-0447 (47242-00028).

Respectfully submitted,

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Cynthia K Thompson
Cynthia K. Thompson
Reg. No. 48,655
Jenkens & Gilchrist
225 West Washington Street, Suite 2600
Chicago, IL 60606-3418
(312) 425-3900
Attorney for Applicant